

BARBARA K. CEGAVSKE
Secretary of State

GAIL J. ANDERSON
Deputy Secretary for Southern Nevada

CADENCE MATIJEVICH
Deputy Secretary for Operations

STATE OF NEVADA



**OFFICE OF THE
SECRETARY OF STATE**

SCOTT W. ANDERSON
Chief Deputy Secretary of State

KIMBERLEY PERONDI
Deputy Secretary for Commercial Recordings

WAYNE THORLEY
Deputy Secretary for Elections

FILED

4:15 PM
OCT 14 2016

Stokes
SECRETARY OF STATE
ELECTIONS DIVISIONS

**Statement of Emergency Regulation
Allowing Local Election Officials to Manually Input Votes in Certain Circumstances**

Pursuant to the discussion held at the June 23, 2016, meeting of the 2016 Elections Task Force, the Secretary of State's office recommends regulation be adopted through the emergency regulation provisions found in NRS 233B.0613. The purpose of this regulation is primarily to clarify the authority of the local election officials to use the Voter Verifiable Paper Audit Trail (VVPAT) as the official ballot in the circumstance where the mechanical recording device or results cartridges are unreadable.

For purpose of substantiating the requisite emergency under NRS 233B.0613, the Secretary of State believes the regulation is necessary because the current regulatory structure fails to specifically account for procedures to tabulate votes when a mechanical recording device is working improperly due to critical failure. While the mechanical voting system currently in use statewide is robust enough to provide an accurate vote count even in the event that the electronic vote count is not available, explicit authority does not currently exist in Nevada law to use the VVPAT as an official ballot in these situations. This proposed regulation would provide much needed instruction to Nevada's local election officials so that the administration of the election is performed uniformly among all counties and under the proper authority.

For the above reasons, I respectfully request the Governor of the State of Nevada endorse this Statement of Emergency allowing local election officials manually input votes in the event of critical equipment failure. Furthermore, due to the important nature of the proposed regulation, the Secretary of State's office intends to make the regulation permanent after the 2016 general election through the normal process outlined in the Nevada Administrative Procedure Act.

Requested:

Barbara K. Cegavske

Barbara K. Cegavske
Secretary of State

Endorsed:

Brian Sandoval

Brian Sandoval
Governor

Proposed Emergency Regulation

Authority to enact found under NRS 293.124 and 293.247.

Chapter 293B of *Nevada Administrative Code* is hereby amended to add the following new section:

1. Notwithstanding NAC 293B.070(3), in the circumstances where a mechanical voting system, as defined in NRS 293B.033, is used to directly record votes electronically, and during the early voting period or on the day of the election the county clerk is unable to count the number of votes cast for each candidate and for or against each ballot measure due to an error or mechanical or technological failure reading the electronic results cartridge, storage tapes, or similar device, the county clerk shall manually count the number of votes cast for each candidate and for or against each ballot measure by referencing and relying on the paper record required by NRS 293B.082 and 293B.084.
 - a. Once a determination is made under this section that the results cartridge is unreadable and the county clerk has decided to use the paper record under NRS 293B.082, no further attempts shall be made to retrieve the electronic vote count from the results cartridge.
2. In counting the paper record pursuant to subsection 1, the county clerk, with the assistance of county clerk employees as necessary, shall conduct the manual count. The paper records required by NRS 293B.082 and 293B.084 must be removed from the mechanical voting device, opened, and the paper printout ballots contained therein must be examined and counted by the county clerk and the designated employees of the county clerk's office.
3. As soon as practicable after all the votes have been manually counted pursuant to this section, the county clerk shall produce a list or maintain a record indicating the number of votes that each candidate received and the precinct information of the voter. The votes for and against any question submitted to the voters must be accounted for in the same manner. The county clerk must sign a certification of the count and place the certification into the public record. The county clerk must record the vote in the official record under NRS 293.383.
4. The county clerk shall allow members of the general public to observe the counting of the ballots pursuant to this section so long as those members do not interfere with the counting of the ballots. The county clerk shall establish designated areas in which members of the general public may observe the activities set forth in this section, the requirements concerning the conduct of the observing members of the general public, and any other provisions relating to the accommodation of observing members of the general public which the county clerk considers appropriate. In no event shall the observing members of the general public be allowed to interfere with or participate in the vote count.
5. Once the paper record is used to tabulate votes pursuant to this section, the paper record shall be the official vote of record under NRS 293.025, 293B.175, 293.403, and for any further audits, recounts, or contests.
6. All provisions of Nevada Revised Statutes Chapter 293 and 293B relating to the handling, transportation, and retention of ballots apply under this section.